

1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MISSOURI
3 SOUTHERN DIVISION
4
5 NORMA ROGERS, et al.,)
6)
7 Plaintiffs,)
8) Cause No.
9 vs.) 6:19-cv-03346-RK
10)
11)
12)
13)
14 REMOTE DEPOSITION OF DOUGLAS GASTON
15 Taken on behalf of the Plaintiffs
16 February 26th, 2021
17
18 Jamie Jo Kinder, CCR 842, CSR 084.003306
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1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MISSOURI
3 SOUTHERN DIVISION

4 NORMA ROGERS, et al.,)
5 Plaintiffs,)
6 vs.) Cause No.
7 DOUGLAS GASTON, et al.,) 6:19-cv-03346-RK
8 Defendants.)

9

10 REMOTE DEPOSITION OF WITNESS, DOUGLAS GASTON,
11 produced, sworn, and examined on the 26th day of February,
12 2021, between the hours of 1:48 o'clock in the afternoon
13 and 4:24 o'clock in the afternoon of that day, with all
14 parties attending remotely before Jamie Jo Kinder, Missouri
15 CCR 842, Illinois CSR 084-003306, a Certified Court
16 Reporter within and for the State of Missouri, in a certain
17 cause now pending before the Circuit Court of the City of
18 St. Louis in the State of Missouri, wherein NORMA ROGERS,
19 et al., are the Plaintiffs, and DOUGLAS GASTON, et al., are
20 the Defendants.

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1 A P P E A R A N C E S

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33 transcripts@alarislitigation.com

1 (Deposition commenced at 1:50 p.m.)

IT IS HEREBY STIPULATED AND AGREED, by and between
counsel for Plaintiffs and counsel for Defendants, that the
deposition of DOUGLAS GASTON may be taken in shorthand by
Jamie Jo Kinder, CCR, CSR, a notary public and shorthand
reporter, and afterwards transcribed into typewriting; and
the signature of the witness is expressly reserved.

∞ * * * *

14 Counsel acknowledges their understanding that
15 I am not physically present with the witness and that I
16 will be reporting this proceeding remotely. Counsel
17 further acknowledges that I will not be administering the
18 oath in person, but am doing so remotely. The party and
19 counsel consent to this arrangement and waive any
20 objections to this manner of proceeding.

21 Counsel, please indicate your agreement
22 verbally on the record by stating your name and that you
23 stipulate to these terms, after which I will swear in the
24 witness and we may begin.

25 MR. ROTHERT: My name is Anthony Rothert, and

1 I stipulate to these terms on behalf of Plaintiffs Norma
2 Rogers, Arthur Rogers and William Hale.

3 MR. FLEMING: I'm here for Judge Gaston. We
4 stipulate as well.

5 MS. KAYSER: This is Portia Kayser. I
6 stipulate on behalf of Defendants Bobby Duncan, James
7 Sigman, James Reaves, Jennifer Tomaszewski, Glenda
8 Campbell, Sharon Vaughn, and Pamela Tripp.

9 (Witness sworn in.)

10 * * * * *

11 DOUGLAS GASTON,
12 of lawful age, being produced, sworn and examined on
13 behalf of the Plaintiffs, deposes and says:

14 EXAMINATION

15 QUESTIONS BY MR. ROTHERT:

16 Q Mr. Gaston, could you state your name for the
17 record?

18 A Douglas Don Gaston.

19 Q And where are you today?

20 A Houston, Missouri, at the courthouse, Texas
21 County Justice Center.

22 Q And is that where you work?

23 A Yes.

24 Q Are you in your office?

25 A No.

1 **Q Where are you? In the courthouse?**

2 A Courtroom C in the courthouse and I'm seated
3 at the judge's seat here in the courtroom.

4 **Q Okay. Is that the bench there in that**
5 **courtroom?**

6 A The bench, and that's so I had access to a
7 good computer monitor with a video.

8 **Q All right. Can you -- I'm assuming that you**
9 **have some experience with depositions and know the basic**
10 **ground rules about a deposition. Is that fair?**

11 A Yes.

12 **Q And, in fact, you are a licensed attorney?**

13 A Yes.

14 **Q How long have you been licensed to practice**
15 **law in the State of Missouri?**

16 A Since 1995.

17 **Q Where did you go to law school?**

18 A University of Arkansas at Little Rock.

19 **Q And is Missouri the first state you became**
20 **licensed to practice law in?**

21 A Yes.

22 **Q Since 1995, have you had any other jobs that**
23 **do not involve the law or the practice of law?**

24 A Yes.

25 **Q Okay. Can you tell me what those jobs were?**

1 A I was state representative for this area in
2 1997 and '98. I was deputy state treasurer for the State
3 of Missouri from, I believe, 2004 through the end of 2008.

4 Q **All right. Any other jobs outside of the law**
5 **since 1995?**

6 A I don't think so.

7 Q **Are you currently employed?**

8 A Yes.

9 Q **Who is your employer?**

10 A I'm a judge for Texas County, so State of
11 Missouri is my employer.

12 Q **And what's the job that you do for the State**
13 **of Missouri?**

14 A I'm the Associate Circuit Judge for Texas
15 County, Missouri, in the 25th Judicial Circuit.

16 Q **What is an Associate Circuit Judge?**

17 A I am the judge for the county, the only one
18 elected for the county. We have two circuit judges, but
19 the associate is the judge of initial jurisdiction for all
20 sorts of matters of litigation and cases, including
21 criminal, all civil, probate, juvenile, a little bit of
22 everything.

23 Q **What's the difference between an associate**
24 **judge and a circuit judge?**

25 A The associate, again, is the judge that -- For

1 example, in a criminal case when a request for a warrant is
2 made, that comes to me and not the circuit judge. I would
3 hear everything on that case, including initial bond, all
4 initial court appearances, all matters that would lead up
5 to preliminary hearing, if there were a preliminary
6 hearing. If it's a grand jury indictment, it would go
7 straight to the circuit judge, except we have a local court
8 rule that allows me to conduct arraignments and bond
9 hearings. That's one example. Similar in other things.

10 Civil matters, if it's a civil suit under
11 \$25,000, an associate has jurisdiction. If it's over, it's
12 a circuit judge's jurisdiction. Things like that.

13 Q **And how long have you been an associate judge?**

14 A Since January 1st of 2009.

15 Q **How did you come to get that job?**

16 A I was appointed by the governor.

17 Q **And who was the governor then?**

18 A Matt Blunt.

19 Q **And how did you come to be appointed by the**
20 **governor?**

21 A I was asked if I would like to be judge of my
22 home county and I said I sure would.

23 Q **Okay. Who asked you?**

24 A The governor.

25 Q **Was that a surprise for him to ask you?**

1 A A bit of a surprise, yes.

2 **Q Have you previously expressed interest in**
3 **being a judge?**

4 A No. Not to him anyway. I had expressed
5 interest to other people throughout my career, but not to
6 him.

7 **Q Were you taking the place of someone else when**
8 **you became associate judge?**

9 A Yes. Brad Ellsworth was facing mandatory
10 retirement because of his age.

11 **Q And what age is mandatory retirement for**
12 **judges in Missouri?**

13 A 70.

14 **Q And what is your age?**

15 A 53.

16 **Q Since the time you have been an associate**
17 **judge for Texas County, do you have any other jobs or work**
18 **that you do other than being a judge?**

19 A I coach various sports, including softball and
20 basketball primarily. I have taught college. I am trying
21 to remember if I have taught college since I have been
22 judge or not. I have done that in the past. That's about
23 it.

24 **Q Where have you taught college?**

25 A For Southwest Baptist University. But when

1 you say where, that's locally. They have branches locally,
2 and I taught classes in Mountain View and Houston, I
3 believe, in the past.

4 **Q Are there any other colleges at which you have**
5 **taught classes?**

6 A No.

7 **Q What classes have you taught?**

8 A Government classes. I'm trying to remember.
9 Several times I have taught just basic government,
10 political science, 101-type courses.

11 **Q Any other work outside of being a judge?**

12 A No.

13 **Q Have you authored any books?**

14 A Yes.

15 **Q Okay. What books have you authored?**

16 A The two that have been published are called --
17 Believe is one book. The other one is called Am I a Turtle
18 or a Tortoise, so it's not an intellectual piece of work or
19 anything. They are kids books. So I don't consider that a
20 job. I did those, and all of the proceeds, I have set
21 those up so all the proceeds are donated to charitable
22 causes. I make nothing off those books.

23 **Q What is Believe about?**

24 A About believing in yourself and the purposes
25 for which you're created. It uses historical figures and

1 some same-day athletes and singing stars, people like that,
2 to get the point to young people that they can achieve
3 anything that they can put their minds to and work towards
4 and believe in themselves to achieve.

5 **Q What is Am I a Turtle or a Tortoise about?**

6 A It's about a little turtle or tortoise who is
7 having an identity crisis and comes to understand that it's
8 really not important what outward appearances are but what
9 your character is and what your heart is. I can get you a
10 copy if you would like, Tony.

11 **Q You might actually. It sounds interesting.**

12 **Thank you.**

13 **All right. Now that we have those background**
14 **questions out of the way, I just wanted to mention for the**
15 **record that this deposition was noticed up on January 28th.**
16 **Originally it was for 1:00, but we moved it to 1:30 to**
17 **accommodate the deponent.**

18 A I appreciate that very much.

19 **Q All right. But just making sure this is still**
20 **the same notice and that's why you're here; right?**

21 A Yes.

22 **Q And I e-mailed counsel earlier today that I**
23 **have been directed to appear at a federal TRO hearing at**
24 **3:00, so we may have to take a brief recess a little before**
25 **3:00. It's important for me to be prompt, so maybe about**

1 **five minutes before 3:00 we may take a recess. If you need**
2 **any breaks, though, please let me know and we will take a**
3 **break. All right?**

4 A All right.

5 Q **Did you -- Did you receive a preservation**
6 **letter related to the issues in this case?**

7 A Yes.

8 Q **Do you remember when you received that?**

9 A No.

10 Q **Do you remember if it was before or after this**
11 **lawsuit was filed?**

12 A Before.

13 Q **Do you remember what year you received it in?**

14 A I don't, but I think it was 2017.

15 Q **Okay. What actions did you take after**
16 **receiving the -- or in response to receiving the**
17 **preservation letter?**

18 A I spoke with my circuit judge about it, my
19 presiding circuit judge, who also had received a letter.
20 Made sure that I understood from him anything that he was
21 requiring that I would do and if there were any additional
22 steps that needed to be taken as far as our IT department
23 or anything like that, and he indicated that all that was
24 required was to just make sure I saved everything.

25 I also contacted the attorney general's office

1 to ask the same question and make sure that I abided by any
2 directives that they might have, and it was the same from
3 them. And so I have just made sure that I have not erased
4 anything really whether it had anything to do with this
5 case or not.

6 **Q And who was the presiding circuit judge then?**

7 A John Beger, B-E-G-E-R.

8 **Q What did you do in preparation for today's
9 deposition?**

10 A I have consulted with counsel, Jack Fleming,
11 and reviewed some documents.

12 **Q What documents did you review?**

13 A Reviewed my answers to interrogatories and the
14 deposition of Bobby Duncan.

15 **Q Did you review any other documents?**

16 A Certainly not in the last few days.

17 **Q Who is Bobby Duncan?**

18 A He is a -- was a deputy sheriff who served as
19 bailiff for a while here in the courtroom.

20 **Q Other than your attorney, did you talk to
21 anyone else about this deposition?**

22 A I had visited with my wife about it. I think
23 the only conversation I have had with my clerks about this
24 case at all in quite some time is just that there was going
25 to be a deposition today and that I wouldn't be available

1 during this time.

2 **Q Who, other than your attorney, have you spoken**
3 **with about the events at issue in this case?**

4 A When all of the press happened about the case,
5 there was an article in the Post-Dispatch about the case
6 and I had several people asking me about that at that time
7 and what had happened.

8 Before that, there was a complaint filed
9 against me to my oversight board, which is the -- I believe
10 I'll get this right -- Committee on Removal, Retirement and
11 Discipline is the name of the body that oversees the judges
12 in the State of Missouri, and they asked me to give my
13 explanation as to the allegations that were in the
14 complaint.

15 Other than that and the people that I have
16 mentioned already, I think just friends and family
17 primarily just asking me what was going on because they had
18 heard about it or read about it.

19 **Q Do you know who you spoke to, from or with the**
20 **Judicial Review Board?**

21 A Well, I spoke with Jim Smith, who is legal
22 counsel for that body, and then I was asked to come and
23 meet with Jim Smith and Judge Nancy Rahmeyer, who was chair
24 of the commission at that time.

25 **Q Okay. And what did you say to Jim Smith and**

1 **Judge Rahmeyer?**

2 A Well, initially I was asked for my side of
3 what had happened, and so I provided that in writing as to
4 what had happened. And then at the in-person meeting, I
5 just described various things, and we had a conversation
6 about what had happened with those two individuals at that
7 time.

8 **Q Okay. And what two individuals are you
9 referring to?**

10 A Judge Rahmeyer and Jim Smith.

11 **Q With those two. Okay.**

12 A And I'm not trying to be coy. If you want me
13 to go into detail and tell you my side --

14 **Q I'll ask. Do you remember -- who do you
15 remember speaking to after there was -- Well, first of all,
16 approximately when was there a news story about this case,
17 do you remember? Do you remember the year?**

18 A I don't for certain, no. I'm going to -- I'm
19 going to guess it has been a couple of years, but I don't
20 know for certain when it was. I haven't looked at it in a
21 long time.

22 **Q Who do you remember speaking to about the news
23 story?**

24 A My family was concerned about it. They asked
25 about it. I visited with my family about it. People

1 around the courthouse asked about it. I'm sure I had other
2 friends reach out. I do not recall at this time who -- you
3 know, if I were to make a list of all the people, I
4 wouldn't be able to do that. But just family and friends.

5 **Q Could you provide -- Would you tell me the**
6 **names of the people that you do remember speaking to,**
7 **family or friends or people around the courthouse?**

8 A Well, my parents' names are Don and Jean
9 Gaston. My sisters' names are Julee Chipps and Debbie
10 Lewis. My clerks' names at that time, I might need to
11 consult with our roster because I think a couple of those
12 people have left at this time. But Shelly Cummins and
13 Mildred Williams were both clerks that were with me in the
14 courtroom the day that this incident happened, and so they
15 talked with me about it for certain.

16 Other members of that office include the
17 elected circuit clerk, who is Marci Mosley, Dena Neil
18 Sillaman, and I would have to consult with our clerk roster
19 to tell you for certain who the other ones were at that
20 time because a couple have left and we have had a couple
21 that have been hired, and I don't remember for sure when
22 that happened with the rest of the ones in the office.

23 I'm -- I don't recall exact conversations, but
24 I believe I spoke with members of the sheriff's department
25 about it, probably the head bailiff who was Danny Fox, and

1 beyond that, I would have to give it a lot more thought to
2 try to come up with anyone that I can remember in
3 particular. It's been a long time.

4 **Q Okay. Have you spoken with anyone about this**
5 **case in the last six months, other than your lawyer?**

6 A Again, my wife is the one who I have spoken
7 with primarily about it. In the last six months? I really
8 don't remember conversations with other individuals about
9 it in the last six months. I can't recall any at this
10 time.

11 **Q Have you discussed the incidents in this case**
12 **with a Pamela Tripp?**

13 A I don't think so.

14 **Q What about Jennifer Tomaszewski?**

15 A No. No.

16 **Q Have you discussed the events of the case with**
17 **Linda Campbell?**

18 A No.

19 **Q Have you discussed the events of this case**
20 **with James Reaves?**

21 A No.

22 **Q Have you discussed the events in this case**
23 **with James Sigman?**

24 A Possibly. He was the elected sheriff when
25 this happened. He was removed from that position at some

1 point along the way, and I don't recall the timing of all
2 of that, but it's possible I spoke with James. I don't
3 remember it. If he was still sheriff, it's likely that I
4 would have.

5 Q Okay. And do you know when he was removed?

6 A No.

7 Q Do you know -- How was he removed?

8 A Well, that's actually an interesting question
9 because he was not officially removed for some time,
10 although there was a new sheriff in Texas County. The
11 legalities of all that always cause me to wonder, but at
12 some point, there was a new sheriff that was appointed and
13 James no longer acted as sheriff, although he had not been
14 removed by quo warrant or any other legal means. And I'm
15 really not even sure of the status of this case right now.

16 Q Okay. So who is the sheriff now?

17 A Scott Lindsey.

18 Q Okay. And do you think James Sigman might
19 still be the sheriff also or --

20 A Well, I have not checked on the status of his
21 case as to whether there has been any formal removal. It
22 seems to me that I heard that he agreed to step down at
23 some point in the last few months, but I don't know for
24 sure about that.

25 Q Has there been an intervening election or --

1 A There has been an election since then, I
2 believe. I think Scott ran unopposed for election in the
3 last election. I think that's right.

4 Q **So then Mr. Sigman is definitely done being**
5 **sheriff if his term expired and somebody else was elected;**
6 **is that right?**

7 A That would be true.

8 Q **All right. Do you know why he stepped down or**
9 **whatever happened or why another sheriff?**

10 A He was accused of a lot of wrongdoing and he
11 was charged with crimes.

12 Q **Was he convicted of any of those crimes?**

13 MS. KAYSER: Object to relevance.

14 A Not that I'm aware of.

15 Q **(By Mr. Rothert) Not that you're aware of, did**
16 **you say?**

17 A That is what I said. I need to be a better
18 client and give counsel a chance to object, don't I?

19 Q **Have you discussed the facts or the incidents**
20 **in this case with Robert Duncan?**

21 A That's possible. I don't recall doing that,
22 but that's very possible, yes.

23 Q **Okay. Can you tell me what your understanding**
24 **of this lawsuit is, what it's about, what's being --**

25 MR. FLEMING: I'll object to the form. Vague.

1 MS. KAYSER: I'll join.

2 MR. ROTHERT: Okay. I don't understand.

3 What's your -- Form doesn't tell me anything. I'm happy to
4 fix the question if you would like, but --

5 A Before we clarify that, can I clarify my
6 previous answer and just tell you that I do feel sure that
7 at least in passing I have had some conversation with Bobby
8 Duncan about the case. He served as bailiff for me for
9 quite awhile after this happened, and I'm sure that it has
10 come up, and I think I can recall just as I have gone in
11 and out of court that some things have been said. I don't
12 recall any in-depth conversation, but I feel pretty sure
13 that we have had conversation about it. So I just wanted
14 to make sure that I gave a clear answer on that.

15 Q (By Mr. Rothert) I appreciate that. Thank
16 you. I will just try to ask my question again to keep the
17 transcript as orderly as possible then. Please don't
18 answer right away in case there's objections.

19 What is your understanding of the lawsuit
20 that's been filed against you?

21 MR. FLEMING: I'll just object to the form.
22 It's vague. Calls for a narrative response.

23 Q (By Mr. Rothert) I will ask a question. Are
24 you aware that Norma Rogers, Arthur Rogers and William Hale
25 filed a lawsuit against you in the United States District

1 **Court for the Western District of Missouri in the Southern**
2 **Division where it's been assigned Case No.**

3 **6:19-cv-03346-RK?**

4 A Yes.

5 Q **What is your understanding of what that**
6 **lawsuit claims against you?**

7 MR. FLEMING: I'll object to the form. Vague.
8 Subject to my objection, you can answer if you know.

9 MS. KAYSER: I'll join the objection.

10 Q **(By Mr. Rothert) Let me ask another question.**
11 **Do you understand what I'm asking when I ask you what your**
12 **understanding of the lawsuit against you is?**

13 A Well, I understand in a general sense that
14 you're asking me about the general nature of the case,
15 which is that they claim that they were detained unlawfully
16 and unreasonably and that Mr. Hale suffered injuries
17 because of that.

18 Q **Do you have any knowledge of the veracity of**
19 **their claims that they were detained?**

20 A I am aware of what the allegations are and
21 what some of the responses are, including what I read in
22 Bobby Duncan's testimony from his deposition. I have no
23 personal knowledge. I was in the courtroom conducting
24 court the whole day that this happened, so I don't know
25 what happened in the jail.

1 Q Do you know whether they were -- Norma Rogers,
2 Arthur Rogers or William Hale were detained at all that
3 day? And let's -- let me focus your attention on
4 June 20th, 2017. Do you have any personal knowledge
5 whether Norma Rogers, Arthur Rogers or William Hale were
6 detained at any time on that date?

7 A Not from my personal observation, no.

8 Q So it's your understanding that they were free
9 to go home any time that day that they wished?

10 A I don't know the answer to that. I was not in
11 the jail.

12 Q Did you encounter Norma Rogers, Arthur Rogers
13 or William Hale on June 20th, 2017?

14 A They were in my courtroom, yes.

15 Q Do you know why they were in your courtroom?

16 A They were interested in a guardianship
17 proceeding involving Chloe Collins, and my understanding is
18 that's their granddaughter, the Rogers' granddaughter.
19 William Hale, my understanding, is an uncle.

20 Q All right. And were they parties to a case or
21 were they served or were they doing something else?

22 A The case was presented to me as an uncontested
23 hearing on the date of the hearing you're inquiring about.

24 Q June 20th, 2017?

25 A Yes. And they were not parties listed in

1 that, no.

2 **Q So they were observing in the courtroom?**

3 A Apparently, yes.

4 **Q And is that --**

5 A They made it clear they wanted to be involved
6 in the case.

7 **Q Okay. Is it unusual for people to observe
8 court proceedings in Texas County?**

9 A Well, I'm not sure how to answer that. Some
10 people do. I would say, as a matter of the general
11 population, it's unusual. If you have an interest in a
12 case, you might show up to observe. That still might be
13 somewhat unusual, but certainly people do it sometimes.

14 **Q Are the court proceedings in Texas County
15 generally open to the public?**

16 A Yes.

17 **Q And the type of case that you were hearing, I
18 believe you said a guardianship?**

19 A Yes.

20 **Q Are those open to the public?**

21 A Almost always. There are times that parties
22 or counsel might ask that it be a closed courtroom because
23 of a delicate nature of things that might come in by
24 testimony or evidence. Sometimes we have some pretty ugly
25 cases that there's a legal basis for closing a courtroom,

1 but I don't do that unless it's necessary.

2 **Q On June 20th, 2017, for the case you have**
3 **described earlier, was the courtroom closed?**

4 **A No.**

5 **Q Did there come a time on June 20th, 2017, that**
6 **you directed Norma Rogers, Arthur Rogers and William Hale**
7 **to take a drug test?**

8 **A There came a time that day that they had**
9 **agreed to take a drug test, and I showed that as an**
10 **official order of the court that all interested persons in**
11 **that case be drug tested that day.**

12 **Q And when you say agree, in what way did they**
13 **agree?**

14 **A My recollection of that day was that they were**
15 **asked if they would agree to be drug tested and they agreed**
16 **they would.**

17 **Q Asked by whom?**

18 **A My recollection is the guardian ad litem in**
19 **that case asked that question at side bar, turned around**
20 **and asked that question, and they agreed.**

21 **Q Do you know if that's -- that was on the**
22 **record?**

23 **A I believe it was not on the record.**

24 **Q Did you order them to be detained for the**
25 **purpose of a drug test?**

1 A No.

2 Q Did you intend for them to be detained that
3 day?

4 A No.

5 Q Do you recall who the deputy was in your room,
6 courtroom, at the time of that hearing on June 20th, 2017?

7 A I had at least one bailiff, Bobby Duncan.

8 There may have been more. I think Eric Brown was in and
9 out of the courtroom that day.

10 Q Do you recall asking Mr. Duncan to help you
11 carry out -- or help carry out the drug testing?

12 A Yes.

13 Q Okay. And what did you mean when you were
14 asking him to help you carry that out?

15 A At that time, the sheriff's department in the
16 jail did drug testing. They did it for our drug court.
17 They did it for family law cases. Virtually anything that
18 needed a drug test, the sheriff's department conducted the
19 drug test. And so I was asking him to escort the
20 individuals in the case to the jail so that they could be
21 drug tested.

22 Q When the sheriff was doing drug testing, do
23 you know what protocols or procedures they used to do drug
24 testing?

25 A Not in any detail. I know that it was a

1 standard drug test, multi-panel drug test that we had
2 gotten approval from our supervisors at the state drug
3 court because we use them for the drug court screens also.
4 I know that they were administered by jail personnel in
5 person. Beyond that, I'm not sure.

6 **Q Do you know if anyone checked to see if people**
7 **were taking prescription drugs before drug testing?**

8 A I'm not sure what their procedure was. I know
9 that that question came up quite a lot, and I know that
10 when that was ever raised as a reason why someone had
11 tested positive, I made sure that they were given a chance
12 to provide a prescription. That even included drug court,
13 even though they weren't supposed to be on a prescription
14 like that. I would always make sure of that. I think -- I
15 think they did that in the jail as well.

16 **Q Do you know if there was any backup testing in**
17 **case there's a false positive?**

18 A Often there was, yes.

19 **Q So do you know what the protocol was for the**
20 **backup test?**

21 A Typically, if someone requested it, we would
22 do the backup test. The backup test is going to be more
23 expensive and take more time, which, of course, is fine,
24 but sometimes people would want that and sometimes they
25 would just admit that they had used, and it just varied on

1 a case-by-case basis.

2 There were a couple of different places that
3 we would use if we wanted to do a backup test and sometimes
4 I would want a backup test. Sometimes the results just
5 showed diluted, things like that, and I would want to do
6 the backup to know what I was looking at.

7 **Q Okay. And who read the tests or told you what
8 the results were? I mean, was it, you know --**

9 A Different individuals depending on who was
10 working. You know, for a long time there was one head
11 deputy that would be the primary one that would do that,
12 and I don't think she was still working at that time.

13 **Q What was her name?**

14 A Her name was Melissa Dunn, and I'm certain
15 that she was not working at that time now that I think
16 about that. She ran against James for sheriff and lost, so
17 I know that she was not. So there were different people
18 that did. I'm not sure who on that day.

19 **Q And what were their qualifications, do you
20 know?**

21 A Not sure.

22 **Q Do you know if they had any?**

23 A Not sure.

24 **Q Now, when you were making an order for Norma
25 Rogers, Arthur Rogers and William Hale --**

1 A Let me clarify that one, too. Sorry. As I
2 have alluded to, I was judge over our drug court for a
3 number of years. We made sure that everything we did was
4 in compliance with what was required by all those who
5 oversaw the drug court, including on a federal level.

6 So I'm not sure where all the training took
7 place. I'm not certain what their qualifications were. I
8 was just thinking about my answer thinking that sounded
9 like maybe I didn't know that they were qualified. I knew
10 that they were qualified. But as far as exactly what those
11 qualifications were, I am not sure of that.

12 **Q Do you know if the qualifications for drug**
13 **testing, drug testing protocol and personnel for persons**
14 **who are in drug court is the same as for other people being**
15 **drug tested?**

16 A I'm not positive about everything they did in
17 the sheriff's department. That's not -- That's not mine to
18 run. But my understanding was this was the same people
19 that did the test.

20 **Q But what I was asking is: Do you believe that**
21 **drug testing that's good enough for drug court is good**
22 **enough for anyone?**

23 MR. FLEMING: I'll object to the form. Vague.
24 Subject to that, you can answer, if you know.

25 A Well, again, we used a multi-panel test that

1 was proven effective and one that drug courts all around
2 the state relied upon, and if there was any question about
3 that, we did the backup test.

4 **Q (By Mr. Rothert) Okay. And so you used them**
5 **for purposes other than drug court?**

6 A Yes.

7 **Q Norma Rogers was not in drug court, was she?**

8 A No.

9 **Q Arthur Rogers was not in drug court?**

10 A No.

11 **Q And William Hale was not in drug court?**

12 A No.

13 **Q So why were they drug tested?**

14 A This case that is at the center of this
15 controversy, the young lady named Chloe Collins, I had
16 received a request for emergency guardianship because of
17 drug use in the home. The day of the hearing that you have
18 asked about, when I was made aware that the parents and
19 grandparents were in the courtroom, I called side bar
20 because no one had made me aware that they were in the
21 courtroom, and I wanted them to be involved, at least to
22 have the chance to be heard, if they wanted to be. That is
23 my policy on every case I hear.

24 And so I asked the attorneys why I was not
25 made aware that these people were in the courtroom, and at

1 the time that we had that discussion, again, my
2 recollection is the guardian ad litem, Ms. Upton said to me
3 that anyone who wanted placement of this child in their
4 home, she wanted them to be drug tested because there are
5 allegations of drug use in the extended family as well.

6 And that was -- I'm jumping a few steps, but
7 that was essentially what Arthur Rogers was asking for when
8 he stood up in court was to let me know that he didn't
9 agree with what was happening and he wanted to be
10 considered for placement as well, and William Hale made the
11 same request later.

12 **Q William Hale, you're saying, requested**
13 **placement of the child with him?**

14 A William Hale stood up and said that he would
15 like to be drug tested also because the kids sometimes stay
16 with him and he would like them to be able to stay with
17 him, and so he would like to be drug tested so that there
18 was no issue with them staying with him. I don't recall
19 exact words, but it was along those lines.

20 **Q Do you know why none of that showed up on the**
21 **record or in the recording of the hearing?**

22 A I know that when we went on side bar, that
23 must have all been off record. I'm not sure when the
24 device was on and when it was off. I have listened to it.
25 It has been a long time since I have listened to it, but I

1 recall there were significant portions of it that were not
2 on there, and especially including the portion when the GAL
3 was asking those things.

4 **Q And when you say drug use in the home, are you**
5 **referring to illegal drugs or legal drugs or both that you**
6 **were concerned about?**

7 A Well, that was not specified. Certainly the
8 indication to me was drug abuse, whether prescription or
9 illegal.

10 **Q If Norma Rogers, Arthur Rogers and William**
11 **Hale had voluntary -- voluntarily agreed to undergo a drug**
12 **test, why did you make it an order?**

13 A I think that's just standard language from a
14 judge, and from me, if I'm going to have someone do
15 something, it's in the form of an order. Amongst other
16 reasons for any decision of a court to be right for appeal,
17 it has to be an order or a judgment, actually, preferably a
18 judgment, but I was admonished early on in my judicial
19 career never to just do a memo, for example, because you
20 really can't take action on that as an attorney or
21 litigant. You need an order or a judgment to be able to
22 act on it.

23 **Q So once you ordered Norma Rogers, Arthur**
24 **Rogers and William Hale to be drug tested, it was no longer**
25 **voluntary; is that true?**

1 MR. FLEMING: I'll object to the form. Calls
2 for a legal conclusion.

3 **Q (By Mr. Rothert) You can answer if you know**
4 **the answer to that.**

5 A My answer is: I believe they volunteered to
6 do that. The whole purpose for them speaking up in court
7 was because they wanted to have this child with them and
8 didn't agree with anything that was going on, and they had
9 agreed to take the drug test because the attorney
10 representing the child said I want to make sure wherever
11 this child is that there are no drugs around, and everyone
12 said they agreed to do that.

13 As far as disobeying an order, I don't like it
14 when anyone disobeys an order, but I can't get inside the
15 Rogers' mind and tell you to what extent they believed it
16 was voluntary versus an order. They did agree to do it,
17 though.

18 **Q Once they -- Once you ordered it, were they**
19 **free to disregard your order and just not be drug tested?**

20 A I'm waiting for my counsel to object if he
21 wanted to because that's a speculative answer. I really
22 couldn't give you a definite answer on that. These are
23 grandparents who were very upset. I had been made aware
24 that they were upset the day before, and I understand that
25 emotions run high in cases like these and there are times

1 that I give a lot more leeway in cases involving kids like
2 that than in other types of cases.

3 So if they had said something, for example,
4 like, in that case, we would rather not be considered for
5 placement, I think I probably would have said that's okay,
6 you're free to go then.

7 **Q Okay. So they were not free to go is what**
8 **you're telling me once they --**

9 A It doesn't seem like what I told you. I think
10 I told you that I would have said that they were free to go
11 if that's what they would have said to me.

12 **Q You're saying if they don't want to be**
13 **considered, they are free to go. I'm asking you if they**
14 **still wanted to be considered, were they free to leave**
15 **without being drug tested?**

16 MR. FLEMING: I'll object to the form. Calls
17 for speculation. Subject to my objection, you can answer.

18 A I think I gave my answer.

19 **Q (By Mr. Rothert) You did not. I'm asking**
20 **if -- were they free to leave without any conditions**
21 **without being drug tested?**

22 A Again, my answer is: Depending on what their
23 intention was that day. First of all, if they had not
24 asked to be considered for placement, none of it ever would
25 have come up. If they had told me at any point along the

1 way that they didn't want to anymore, I think there's at
2 least a good chance that I would have said, that's fine,
3 you don't have to be.

4 Q Once you ordered Norma Rogers, Arthur Rogers
5 and William Hale to be drug tested, were they free to
6 leave? If they did nothing else, were they free to walk
7 out the door?

8 MR. FLEMING: I'll object to the form of the
9 question. Calls for speculation. Subject to that, you can
10 answer.

11 MS. KAYSER: Jack, I can't hear you when
12 you're objecting. Is anybody else having a hard time
13 hearing?

14 MR. ROTHERT: It's very difficult.

15 MR. FLEMING: Can you hear me better?

16 MR. ROTHERT: Yes.

17 MS. KAYSER: A little bit. Thanks.

18 THE WITNESS: Is there still feedback when his
19 mic is on? He's just really, really quiet.

20 MR. ROTHERT: It was echoey before.

21 A All right. Well, after all of that, I'm not
22 certain where we were at.

23 Q (By Mr. Rothert) Okay. I'll ask --

24 A I expect orders to be complied with, no
25 mistake about that. But again, any juvenile case like this

1 is a special circumstance, and I can't say conclusively
2 when there's speculation involved like that what I would do
3 in a given situation.

4 **Q How often do you order people in civil matters**
5 **to be drug tested, as a judge?**

6 A It varies.

7 **Q Okay.**

8 A Not often.

9 **Q How many times in the past year?**

10 A I would have to go through each case and look,
11 but not many.

12 **Q Is "not many" less than five, less than a**
13 **hundred? Can you give an --**

14 A Certainly less than a hundred. It could be
15 more than five. Probably not much more than five. It
16 comes up a lot in divorce cases where parties want custody
17 and one party will ask -- make a motion for drug testing of
18 the other party.

19 Usually the end result of that is that counsel
20 for receiving party says, well, we'll take a drug test if
21 your client will. And they'll say, that's fine, we'll all
22 take a drug test. But that happens, I would say, probably
23 five times a year in divorce cases. Probably about that
24 many times a year in other civil cases as well.

25 **Q Other than the -- the drug test, would there**

1 **be any other reason why Norma Rogers, Arthur Rogers or**
2 **William Hale were not at complete liberty to leave on**
3 **June 20th, 2017?**

4 A Arthur Rogers lunged at me as he was leaving
5 the courtroom and was immediately held in criminal
6 contempt.

7 Q **Let me ask you about that because I noticed in**
8 **some pleadings there has been some reference to lunging,**
9 **and I wanted to give you an opportunity to tell us about**
10 **that under oath. What do you mean by lunge?**

11 A As he was being led out of the doorway, he was
12 looking at me. I believe my bailiff was holding the door
13 for him and he turned around. He was heading towards the
14 door, he turned around towards me, and one leg came towards
15 me, his arms came up at his sides, and he had a very
16 belligerent look on his face like he might just come all
17 the way at me.

18 Q **And how far away was he?**

19 A I'm going to estimate he is about 15 feet away
20 from me at that point and about three feet away from my
21 clerks.

22 Q **And was that frightening to you?**

23 A It was frightening in the sense that I was
24 worried about my clerks.

25 Q **What were you worried about?**

1 A Well, I was already worried about Mr. Rogers
2 that day because he had threatened my clerks and been very
3 belligerent the night before. So I was already alerted to
4 the fact that he was upset, and he acted very upset that
5 day in court. And so I was worried that he might be
6 violent. Even before that happened I was worried he might
7 be violent.

8 **Q Was he violent, in fact?**

9 A Well, that depends on your definition, but
10 that seemed violent to me. Certainly very unusual and
11 unreasonable for someone to act that way in court.

12 **Q And you held him in contempt for lunging?**

13 A For his behavior and the totality of what he
14 did, including the lunge, yes.

15 **Q Was the lunge the worst of it or what?**

16 A I would say that's the worst of it, yeah.

17 **Q And then on the record you did explain that
18 you were going to hold him in contempt; is that correct?**

19 A Yes.

20 **Q All right. And you did a written order later
21 explaining that you were holding him in contempt?**

22 A Yes.

23 **Q Is there a reason why you forgot to mention
24 the lunge in either your oral or your written remarks?**

25 A In my oral remarks I think I used the words

1 "that look", and so I was including the look on his face, I
2 was including his hand gestures, the whole thing, and
3 didn't use that word.

4 I actually haven't looked at my written order.
5 I'm not sure what words I used there. I know that when I
6 would write up an order of contempt on a day like that day
7 was, when I have a busy docket, my main goal was to get the
8 order written so that the jail was lawfully holding
9 someone. I might have not paid as much attention to the
10 wording as I should have.

11 Q **Would that be unusual if you left out a fact**
12 **in a --**

13 A It's unusual, but it's not something that
14 would never happen, because sometimes people who are held
15 in contempt may be screaming for five minutes. So you
16 don't include everything that's said and every part of it
17 necessarily in your order. You try to state the legal
18 reasons why you held that person in contempt.

19 Q **So other than Arthur Rogers, was there any**
20 **reason, other than the drug testing, that Norma Rogers or**
21 **William Hale would not have been at liberty, had their full**
22 **liberty that day?**

23 A No reason I can think of.

24 Q **Now, what gave you the authority to order that**
25 **Norma Rogers be drug tested?**

1 MR. FLEMING: I'll object to the form. Calls
2 for a legal conclusion. Subject to my objection, you can
3 certainly answer.

4 A I believe that I have inherent power to order
5 a drug test in a case like that when a party is seeking
6 placement of a child, and especially when they consent to
7 the test being done for that purpose.

8 **Q (By Mr. Rothert) And is that the same answer**
9 **you would give for Arthur Rogers and William Hale?**

10 A William Hale was a little different. He -- I
11 don't recall the exact words, but his request was more
12 along the lines, I took it, that the kids were at his house
13 often. Not that he was seeking a placement, but that they
14 were there often and he wanted to be tested so that they
15 could be free to be there.

16 Although, I will say, in any case like that,
17 especially in juvenile court, it's my responsibility and
18 the children's division's responsibility in those cases to
19 make sure that a relative is considered for placement first
20 before any foster home or anyone else would receive a
21 placement.

22 **Q So your answer for Arthur Rogers would be the**
23 **same as it was for Norma Rogers?**

24 A In what way?

25 **Q I asked you if your answer for -- as to Norma**

1 **Rogers would be the same for Arthur Rogers and William Hale**
2 **and you gave me an answer about William Hale being a little**
3 **different. So I'm asking if -- what your -- why you**
4 **believe you could order Arthur Rogers to have a drug test?**

5 A Well, again, I think anyone who expresses the
6 intention to be a party in a case and wanties to be
7 considered for placement of a child or the child to be in
8 their custody, I believe the court has power to order a
9 drug test at that point.

10 Q **And then what was your intention to do with**
11 **the results of the drug test?**

12 A Typically in those cases, and I think this was
13 the same, my intention is that counsel would be armed with
14 all information so that they could provide it to the court
15 regarding all placement options and considerations.

16 And so at the next hearing -- I had already
17 ended the hearing that day and explained to the Rogers that
18 I was going to give them a chance to get counsel and be
19 heard in a full hearing, and so we were postponing that
20 hearing for another day so that they would have the chance
21 to do that. And so typically then -- in this case, on that
22 next hearing I would expect to hear from their attorney and
23 I would expect to hear from the guardian ad litem and
24 possibly opposing counsel about the results of the test and
25 that would give me information upon which I could make a

1 good decision where a child who has been alleged to be in
2 danger should be placed.

3 **Q Was there any other reason or intent and**
4 **purpose that you had for the drug testing?**

5 A No. The only purpose I had that whole day was
6 keeping a little child safe.

7 **Q And the -- You didn't have any punitive**
8 **purpose, you weren't planning on punishing anyone based on**
9 **a drug test result?**

10 A Punishing anyone?

11 **Q Yes.**

12 A Who?

13 **Q Anyone.**

14 A No, I had no intention of punishing anyone on
15 that day. The hearing was set for guardianship of a child
16 and the allegation was --

17 **Q Right. I'm asking --**

18 A -- he was abusing drugs and the child needed a
19 safe place to stay.

20 **Q I understand all of that. My question to you**
21 **is: When you were ordering the drug tests, were you**
22 **intending to use those results for any punitive purpose?**

23 A No.

24 **Q And did you use the results for any punitive**
25 **purpose?**

1 A No. The purpose was to determine where the
2 child would be safe and whether the people asking for
3 placement could be considered a safe placement.

4 **Q And let me just see if we can break right here**
5 **for a second. Do you know when you have sent down -- Or**
6 **when you have ordered people be drug tested by the**
7 **sheriff's department, do you know if they were kept or kept**
8 **longer or free to leave or --**

9 A I don't.

10 **Q And have you ever held someone in contempt in**
11 **a civil case because their drug test came back positive?**

12 A Yes.

13 **Q When did you do that?**

14 A I did it that day for one, for the parents.

15 **Q Okay.**

16 A Not very often, but occasionally that happens
17 when people come to court under the influence of drugs.
18 The parents told me that their tests would be positive
19 because they were under the influence as they were sitting
20 there in court.

21 **Q Okay. When else have you done it?**

22 A That would be the main example, and again,
23 that's rare, but it's happened.

24 **Q Has there ever been a writ that undid a**
25 **contempt order of yours for someone you have put in jail**

1 **for testing positive on a drug test?**

2 A Yes.

3 Q **And do you know who the individual was in that**
4 **case?**

5 A Starry Ballis.

6 Q **And how did Starry Ballis come to be drug**
7 **tested?**

8 A Starry Ballis was in my courtroom on a
9 criminal docket day. There was a gentleman who had a case
10 before me, and my recollection is, is that in addition to
11 handling his case, I was attempting to give him good advice
12 about staying out of trouble, essentially, and Ms. Ballis,
13 who I did not know at that time, was in the crowd shaking
14 her head in a very exaggerated way back and forth.

15 After I concluded with the gentleman, she got
16 up and stomped to the back of the courtroom. And as she
17 was making her way out of the courtroom loudly exclaimed
18 that this is a bunch of bullshit. And so I called her back
19 to the podium and told her that was not permissible in
20 court. And she proceeded to say that word several times
21 and others that were worse, very loudly, and continued to
22 do that even though I told her a number of times that if
23 she continued to interrupt me and continued to act in that
24 way, I was going to have to hold her in contempt. And she
25 continued to do so, and so I held her in contempt and then

1 I ordered her tested.

2 Q Okay. And what was the basis for ordering
3 her -- observing her in the courtroom who was not part of
4 the case to be drug tested?

5 A She appeared to me to be under the influence,
6 and at that point, I felt that would be a mitigating factor
7 for her because she had acted so contemptuously at that
8 point.

9 Q Okay.

10 A So I believed I needed to do that.

11 Q And then she did test positive; correct?

12 A Yes.

13 Q So then did you reduce the amount of time she
14 was in contempt as a result of that?

15 A Since it's a mitigating factor, I don't
16 believe I showed any docket entry that reduced it, but I
17 think I factored it in. I only recall doing one order on
18 that case, but I think it was a factor in my order.

19 Q Okay. Do you know if that made it into the
20 order?

21 A The fact that she tested positive?

22 Q Or that you were considering that as a
23 mitigating factor?

24 A I doubt that it did. I don't recall. But I
25 doubt that I put it in there.

1 Q Okay. Well, I think we can all agree that
2 it's important to be respectful to courts, so I'm going to
3 ask if we could all agree that we could recess this
4 deposition briefly so that I may appear before Judge Lowry
5 as I have been directed to do.

6 A I think that's great. If I could just make
7 sure that my answer is very clear, I held Ms. Ballis in
8 direct criminal contempt that day as well. There's a
9 difference in the types of contempt. You're probably aware
10 of that, but there is a difference, and when you're held in
11 criminal contempt, that is -- that is a case against you as
12 an individual. So, yes, she started as an observer. At
13 that point beyond that, however, she was not.

14 Q Understood.

15 MR. ROTHERT: All right. I do not know
16 exactly how long this break will take. I would think,
17 based on my experience with Judge Lowry, it will be 15
18 minutes-ish. So I appreciate your patience.

19 (Whereupon, a short break was taken.)

20 Q (By Mr. Rothert) All right. Going back on the
21 record. Let me ask the witness, do you understand you're
22 still under oath from before?

23 A Yes.

24 Q Did you have any discussions with anyone
25 during the break?

1 A Yes.

2 Q **Who did you speak to?**

3 A My counsel and the clerks in the office.

4 Q **What did you discuss with the clerks in the**
5 **office?**

6 A I discussed several pending cases about which
7 they had numerous questions that I had wished they would
8 wait until Monday to ask me, but they seemed like they --
9 they felt like they were urgent, so we talked about some
10 things they needed help with. Not related to this case.

11 Q **Anything else?**

12 A No. Other than I told them that I would still
13 be in here a while.

14 Q **Okay. Well, and for everyone else's**
15 **information, we are ordered to reconvene with Judge Lowry**
16 **at 5:30, so I hope we will be done well before then.**

17 **Could you please tell us now how drug testing**
18 **is done differently in Texas County in the courts than what**
19 **you described was happening in 2017?**

20 A I can't speak for Texas County because we have
21 numerous judges that preside in cases here.

22 Q **Okay. Could you tell me -- I'm sorry. Could**
23 **you tell me about for you?**

24 A The only cases in which I administer drug
25 tests now are ones in which there are agreements from the

1 parties. I don't do it at all in criminal cases. But in
2 civil matters where there is a motion before the court, I
3 suppose I would rule on that motion if there weren't an
4 agreement, but I have not had a case that I can ever recall
5 in which parties don't agree to that when it's requested in
6 civil cases.

7 **Q Are they still done by the sheriff's office,**
8 **the drug tests?**

9 A No. No. The sheriff's office quit doing
10 those quite some time ago.

11 **Q How long ago, if you know?**

12 A Don't know the exact date.

13 **Q Do you know the year?**

14 A I do not, but it's been at least a couple of
15 years ago.

16 **Q Okay. They were still doing them in 2017; is**
17 **that right?**

18 A At least part of that year, yeah.

19 **Q Do you know who actually administers the drug**
20 **tests that you order now?**

21 A For probationers in criminal cases, they do
22 tests at the office of Private Probation Services, which is
23 the supervising entity for all of our misdemeanor cases.
24 For felony cases, the state office of probation and parole,
25 I believe, still conduct those at their office. For civil

1 cases, our private probation office will do that for a fee
2 as will other drug testing services in Rolla, West Plains
3 and Mountain Grove. Those are the primary ones we use, and
4 I don't know off the top of my head what the names of those
5 entities are, but we have places in those towns that will
6 conduct those tests.

7 **Q Do you believe that on October -- or I'm**
8 **sorry. Turning your attention back again to June 20th,**
9 **2017, do you believe that it would be unreasonable to**
10 **physically restrain Norma Rogers because of the drug test**
11 **that you ordered?**

12 MR. FLEMING: I'll object to the form. It
13 calls for a legal conclusion. Subject to my objection, you
14 can answer.

15 A Well, I would ask you to clarify, too. Who
16 are you asking? Would it be unreasonable for me to
17 restrain her, for the sheriff to restrain her? What are
18 you asking me?

19 **Q (By Mr. Rothert) I'm asking you if, based on**
20 **the information that you have available to you and your**
21 **personal knowledge, if it would have been unreasonable for**
22 **anyone to restrain Norma Rogers on June 20th, 2017, in**
23 **response to your order of drug testing?**

24 MR. FLEMING: Same objection.

25 MS. KAYSER: Object to the extent that it

1 calls for speculation and it's an improper hypothetical.

2 But you can go ahead and answer.

3 MR. FLEMING: I join.

4 A I think that's a pretty difficult answer for a
5 number of reasons, including, you know, her demeanor in
6 court was fine that day. She never caused any problem in
7 court. I have no idea what she acted like in jail, and of
8 course, police officers often have to take --

9 Q (By Mr. Rothert) Excuse me. Let me interrupt
10 you there. Let me -- No. What I asked you is based on the
11 information -- your personal information is what I asked.
12 So you don't need to guess about what might have happened
13 or what might have been different. You can just tell me
14 based on the information that you have, your knowledge, was
15 it reasonable to restrain her in response or because of the
16 order for drug testing that you entered?

17 A Well, that's the question I'm attempting to
18 answer because, again, my observations of her in person
19 were that she was not a problem. I do not know what she
20 acted like when she was outside my presence. So you're
21 kind of asking me two questions, and I'm telling you
22 that --

23 Q I'm asking you a question. I'm asking --

24 A May I answer?

25 Q No. My question is: Based on your personal

1 information, what you observed, what you know to be true,
2 was it reasonable as a result of your order -- would it
3 have been reasonable as a result of your order to restrain
4 Norma Rogers?

5 A I'm trying to answer that question.

6 MS. KAYSER: Object.

7 A I'm sorry.

8 MS. KAYSER: Sorry. It calls for speculation
9 as the judge was not present in the court -- or in the
10 jail.

11 MR. ROTHERT: No talking objections. That's
12 not how we work.

13 MS. KAYSER: My objection --

14 MR. ROTHERT: That does not happen in
15 depositions. Thank you.

16 Q (By Mr. Rothert) You may answer the question.

17 MR. FLEMING: I join.

18 A Well, I'm trying to answer the question. The
19 answer to the question is: I don't know what happened in
20 the jail or even in --

21 Q (By Mr. Rothert) I'm not asking you to
22 speculate, Your Honor. I'm asking you to answer the
23 question based on what you saw and what you know.

24 A You are asking me for speculation.

25 Q Well, let me --

1 A You did ask me to speculate. You asked me if
2 I thought it would be reasonable for her to be restrained,
3 and I'm telling you, based on what I saw in the courtroom,
4 there was no reason to restrain her. I don't know what she
5 did once she was taken out of my presence.

6 Q **Okay. So based on what you saw and the**
7 **information you have about Norma Rogers on June 20th, 2017,**
8 **it would not have been reasonable to restrain her?**

9 A That's not my answer.

10 Q **Okay. Then what is your answer?**

11 A If she threatened an officer as the test was
12 being conducted, then it would be reasonable for them to
13 restrain her. I have no idea what she did when she was
14 being tested, Counselor.

15 Q **Okay. And the question is: Based on the**
16 **information that you have -- Do you know what you know? Do**
17 **you know what you saw about Ms. Rogers that day?**

18 A I know what I saw in the courtroom. She was
19 not drug tested in the courtroom.

20 Q **That's all I'm asking. Based on what you know**
21 **and what you saw that day, would it have been reasonable to**
22 **restrain her as -- because of your order of drug testing?**

23 A Well, I have given you my answer.

24 Q **You have not.**

25 A She did not give me a problem in the

1 courtroom. I do not know what she acted like in the jail.

2 Q Okay. So based on what you saw, would it have
3 been reasonable to restrain her?

5 Q Okay.

6 A That's not where she was drug tested.

7 Q My question is: Did your order intend that
8 she be restrained?

9 A My order did not intend that she be
10 restrained.

11 Q Did you have any reason when you entered your
12 order to believe that it would be reasonable to restrain
13 her?

14 A I don't anticipate what any police officer is
15 going to encounter and make a judgment as to whether they
16 are being reasonable. I often have to consider that after
17 the fact as to whether they acted reasonably, but I don't
18 do that when I send someone down. If they are threatened
19 or any number of things happen, that's a decision for them
20 and not me. And I'm not trying to be difficult about that
21 answer, but you're trying to get me to say whether they
22 acted reasonably and I can't know that.

23 Q Well, I'm not asking you that. I'm asking you
24 if -- if your order was reason enough. If it's nothing
25 else changed other than you had an order for drug testing,

1 **would that be a reasonable basis for restraining?**

2 A Well, that's a different question.

3 Q **Next question. You answered the first one**
4 **finally.**

5 A But again, just an order for drug testing,
6 there is no detention that is contemplated by that.

7 Q **Okay. Thank you. And the same question as to**
8 **Arthur Rogers, did you intend for him to be restrained?**

9 A I did not intend for him to be restrained.

10 Q **Thank you.**

11 A He exhibited belligerent behavior, however, in
12 the courtroom.

13 Q **I understand that.**

14 A So that's what's different about him.

15 Q **I was just asking what you intended. Did**
16 **Mr. Hale, did you intend him to be restrained?**

17 A No.

18 Q **Do you know -- I'm not even asking you to**
19 **assume that they were, but do you know if it was a policy**
20 **or regular behavior for people who were sent for drug**
21 **testing to be restrained or detained in the sheriff's**
22 **department?**

23 A My belief is that it was not policy. I would
24 not have agreed to that if that was some standard policy.
25 I would not have allowed that.

1 Q Did there come a time on June 20th, 2017,
2 after Norma Rogers, Arthur Rogers and William Hale left
3 your courtroom initially, that they returned to your
4 courtroom?

5 A I do not recall that they did.

6 Q Do you recall having any -- Do you recall
7 learning about their drug test results?

8 A Yes.

9 Q And what did you learn?

10 A Well, I recall for certain learning about
11 Norma's drug test. I don't remember for certain Arthur's,
12 but --

13 Q Well, let's start with Norma then. What do
14 you remember about learning about her drug test?

15 A I remember being -- Very similar to today
16 actually. When I have a break in court, I'll go into the
17 clerk's office and check to see if they have issues that
18 need addressed, things that need to be signed, questions
19 they need answered. And I was on a break from court, and
20 my recollection is that one of the bailiffs, and I think
21 that it was Eric Brown, brought in a drug test for me to
22 look at and it showed a prescription that was out of date
23 for Norma.

24 Q Okay.

25 A And I believe -- I don't remember if -- I

1 would imagine I was shown the drug test that showed she was
2 positive at the same time, but I don't recall that for
3 certain.

4 **Q Were you aware that she was being detained and**
5 **in the custody of the sheriff's department at the time when**
6 **you got that drug test result?**

7 A I was not.

8 **Q And did you take any action as a result of**
9 **being aware of that drug test result?**

10 A Yes.

11 **Q What action did you take?**

12 A I told the bailiff to let them go, that it
13 wasn't worth even worrying about whether we could find a
14 prescription that was in date, that Arthur Rogers was to
15 remain because he was held in contempt for his actions in
16 the courtroom, but that the other two should be released.

17 **Q Do you know what time of day that was?**

18 A I don't.

19 **Q And I gather from your answer -- I didn't**
20 **specifically ask you about William Hale, but do you have**
21 **any -- were you directing that he should be let go, too?**

22 A That's my recollection, yes.

23 **Q Okay. And can you explain, if they weren't to**
24 **be detained or restrained, what you meant by that they**
25 **should be let go?**

1 A Well, it was reasonable to assume that they
2 were still down there or they wouldn't be asking me those
3 questions. And I wasn't down there. I don't know. It's
4 possible that they were allowed to go home and get the
5 tests. I don't know. But the question being posed to me
6 was whether I wanted further action taken, and I said no,
7 for the same reason that I alluded to earlier, that these
8 are relatives that are concerned about a child, and it's
9 really not my purpose in any of this to be trying to punish
10 someone for drugs, but rather to determine whether they are
11 a safe placement, and I really had no interest in finding
12 them in contempt or anything else at that point in time.

13 **Q Are you aware that Norma Rogers and Arthur**
14 **Rogers and William Hale claim that they appeared again**
15 **before you that day after the drug tests?**

16 A I have heard that that's what's claimed, yes.

17 **Q What do you think of that?**

18 A I do not recall that happening. I can't say
19 conclusively whether it did, but I don't remember that
20 happening. And I wish that I did, but I deal with so many
21 people on docket days, day in and day out, that there are
22 many cases like that that I just can't remember
23 specifically if it's not -- if there's not a record or a
24 document associated with it, it's very often hard to recall
25 what's happened.

1 **Q** **You mentioned that often in court cases**
2 **emotions can run high. Is that -- Is that a common thing**
3 **that happens in court?**

4 **A** Well, I think I was saying that in cases in
5 which a child is being taken from a parent, in those types
6 of cases, those are the ones in which my experience is
7 emotions run the highest. In the ones which I have told my
8 bailiffs, and we have received training, that those are the
9 most dangerous. And for that reason, as well as
10 Mr. Rogers' behavior, that's why I had talked to the
11 bailiffs before court about him that day.

12 **Q** **Do your emotions ever run high in court?**

13 **A** I try to never let my emotions run high.

14 **Q** **Do you raise --**

15 **A** I can't say that I'm flawless in that regard,
16 but I try to not let my emotions run high.

17 **Q** **Do you raise your voice in the courtroom?**

18 **A** I do.

19 **Q** **Frequently?**

20 **A** No.

21 **Q** **Have you listened to the recording of the**
22 **June 20th, 2017, hearing?**

23 **A** Yes. Yes.

24 **Q** **What did you think of your demeanor?**

25 **A** I thought that it cast me in a poor light.

1 Q **Okay. Can you describe what you mean by that?**

2 A I can. Mr. Rogers had come in to the clerk's
3 office the day before and was yelling and cursing at my
4 clerks and accusing me and the sheriff's deputies of
5 kidnapping this child that was taken by my order of
6 emergency guardianship. And he waited down in the hallway
7 for the last clerk to leave the building and followed her
8 out to her car doing the same thing, cursing at her and
9 acting belligerent and scared her to death.

10 The clerks told me about this about 15 minutes
11 before court, and so I alerted my bailiffs to that and told
12 them that this was the type of situation that we have
13 spoken of before, that I was worried about him, and that
14 this was the type of case that, you know, they needed to be
15 on high alert and make sure that nothing happened.

16 And so when he stood up and immediately had an
17 attitude with me, which he did, then there were a few
18 things going through my mind. One is my responsibility, as
19 well as conducting court, is to make sure that the people
20 in my courtroom are safe, and so the judge has a unique
21 perspective from the bench to see what's happening. And
22 when someone acts disrespectful of the court, it's much
23 more than just disrespect. It can be something that can be
24 dangerous if people are allowed to believe that they can
25 act unruly. Order in the court is the old adage that, you

1 know, I have always taken seriously.

2 And so the safety of the court was very high
3 on my list of concerns, but I also try to make sure that
4 people are not allowed to just stand up and interrupt the
5 court and feel like that they are at liberty to do that.
6 And I had a courtroom full of people that day that were
7 watching and so I got a little louder than I ordinarily
8 would, but I was really trying to shut him down so that he
9 didn't feel like he had clear authority to just do whatever
10 it was that was in his mind he was going to do. And I
11 wasn't sure what that was, but I didn't want him to think
12 that he was going to get away with doing anything he
13 shouldn't do.

14 **Q Okay. So you were a little -- You were angry**
15 **at him going in, though?**

16 A I wasn't angry at him. I was concerned about
17 him. I don't get angry at people in my courtroom. I was
18 concerned about him. I was concerned about everyone's
19 safety. I was concerned about my clerk's safety.

20 **Q All right. Do you recall raising your voice**
21 **in an extended hearing regarding your view of public**
22 **defenders not acting quickly enough on a bail hearing?**
23 **That incident ring a bell?**

24 A A particular public defender? You said public
25 defenders.

1 Q **Public defender's office, yes. Do you**
2 **recall -- Let me ask it this way. Do you recall ever**
3 **summoning all of the public defenders to your courtroom to**
4 **talk to them about respect and disrespect for the court?**

5 A Well, I never have called all. I'm not sure
6 who you mean by all the public defenders to my courtroom.
7 Even in our circuit, that would mean several that wouldn't
8 even be in the county on a court day. If you're talking
9 about the two that were in court on a particular day, yes.

10 Q **Okay. Can you tell me about that -- that day**
11 **and what happened that day?**

12 A There was a --

13 MR. FLEMING: Relevance. Subject to my
14 objection, you can answer.

15 MR. ROTHERT: I'm sorry. I did not hear the
16 objection. Is it something I can fix?

17 MR. FLEMING: Just relevance.

18 Q **(By Mr. Rothert) Okay. That's fine. You can**
19 **go ahead and answer.**

20 A There was a public defender who had a
21 client -- It's been a while since I have thought about this
22 one, so bear with me, but I believe it was a first
23 appearance arraignment. He was held with a significant
24 bond because he was accused of stealing gas from a bus in a
25 bus parking lot and breaking into school property, I

1 believe, but he was indigent. And at the hearing a woman
2 who claimed to be his wife, who had, I think, three
3 children with her, stood up and begged me to let him go
4 because they were homeless and he was only stealing the gas
5 to be able to start a fire for them to not freeze to death
6 because it was below freezing.

7 And I would have to look again to tell you
8 exactly what had happened. My recollection was that we
9 were waiting on the public defender to make a decision
10 either as to whether they were going to represent -- I
11 think it was that the one that was in court had a conflict.
12 I'm pretty sure that's what it was, and I asked her to --
13 if she would, to contact the main office of the public
14 defender and try to get someone from that office to give me
15 a position if they wanted to do that that day about this
16 gentleman's bond, because at that point, he's represented
17 by counsel and it's appropriate that counsel make a motion
18 if someone is to be released on bond, and I try to let
19 attorneys do that.

20 So I had asked her to do that, and at numerous
21 points through the day she, in essence, was refusing to do
22 that and acting very disrespectfully to me in the process,
23 at one point turning her back on me when I was addressing
24 her in court.

25 And so I waited and told them once court was

1 done and everyone else had left, all of the public had
2 left, that I wanted the public defenders and the
3 prosecutors to remain in the courtroom and I wanted to go
4 on record so that there was a record of what I was saying,
5 because I believed it was very inappropriate for this
6 attorney to act the way that she had. And I was trying to
7 express to her that she had a promising career, but that
8 she would not realize her potential if she was not
9 respectful in court, that it was just not appropriate to
10 act the way she had, and she continued to act that way as I
11 was trying to have that conversation with her. And, yes, I
12 raised my voice at her that day.

13 **Q And was that because you feared for court**
14 **safety or was that --**

15 A Because I wanted her, first of all, to act as
16 all attorneys should, which is respectful of the court, not
17 me, but of the court and of the system, and also I was
18 concerned about her as a young attorney acting in the
19 manner in which she was acting, because as I told her that
20 day, the judges that I had practiced in front of when I was
21 her age would have taken some severe action against me, and
22 that is true.

23 **Q Were you angry?**

24 A I don't believe I was angry. I was very
25 bothered by her behavior and I was trying to express it,

1 and again, you know, when I listened to myself on that
2 recording, I don't sound like I always wish that I would,
3 but there are also times that I try to impress a point on
4 people, and I was trying to impress a point on her.

5 **Q Do you recall ever addressing public defenders**
6 **not participating in a pre-docket -- you know, the calling**
7 **of the docket or any kind of prayer?**

8 A Do I recall addressing them?

9 **Q Well, let me ask this: Have you ever started**
10 **your dockets with a prayer of any type?**

11 A The bailiffs in my courtroom use a similar
12 opening to that that the Supreme Court uses, which is God
13 save this honorable court, God save the United States of
14 America, and I had a public defender who refused to stand
15 while I was coming into court because of that, yes.

16 **Q Okay. And do the bailiffs do that at your**
17 **direction or --**

18 A Yes.

19 **Q Did that make you angry?**

20 A No, it didn't make me angry. In fact, I got
21 on the phone to the state public defender that day and told
22 him what was going on, and he expressed to me that he found
23 it very unacceptable and would I work with him to just get
24 this particular public defender transferred instead of
25 making him suffer any consequences because he had a

1 religious -- well, he had -- he had beliefs that were not
2 religious and so that was what was offending him he said.

3 The state public defender told me that day
4 that he had intended to ask him if he was offended by the
5 dollars that paid him that had similar language on them,
6 but that he -- So he understood my concern and that he
7 would prefer to take care of that by having him move to a
8 different county if I would agree to that and not cause
9 that attorney to suffer any other consequences, to which I
10 replied that would be more than fine because I don't want
11 him to suffer a consequence. I just don't want an attorney
12 sitting when court opens when the rest of the courtroom
13 stands up making a big scene out of not doing that, and if
14 he has that particular problem and that's the way you want
15 to handle it, I'm fine with that, I won't do anything. And
16 I didn't.

17 **Q Okay. And when you're talking -- Do you think**
18 **it's appropriate for a court to judge the validity or**
19 **sincerity of a lawyer or a party's religious views about**
20 **religion?**

21 MR. FLEMING: I'll object to the form.

22 Relevance. Subject to that, you can answer.

23 A I don't do that. I didn't do that with him.
24 I had a number of ways -- I had a number of ways that I was
25 going to try to address that, including letting him come in

1 late for court, but the state public defender wanted to
2 just move him to a different county, and I said that was
3 fine with me. I wasn't going to make him do that.

4 Q (By Mr. Rothert) Isn't it true that you
5 refused to allow him to just come in late?

6 A No, that's not true.

7 Q Isn't it true that you said that was
8 unacceptable and showed disrespect to the court?

9 A Said that to whom?

10 Q To the state public defender and to the public
11 defender himself.

12 A I might have said something similar to that,
13 because I did believe that when court opens and an attorney
14 purposefully sits while everyone else stands to acknowledge
15 the opening of court, that that is inappropriate. Whether
16 you have a religious belief that is in contradiction to
17 what the Supreme Court uses as an opening to court is a
18 different question. I don't have a problem with that. My
19 problem was with respect for the court and making sure that
20 we handled that in a way that was appropriate, and I had
21 different options that I was --

22 Q I think that you misunderstood my question
23 because I was asking: Isn't it true that you rejected the
24 option of him staying outside the courtroom until you had
25 entered and then entering?

1 A I am trying to remember any conversation I had
2 with that attorney, and I really don't remember.

3 Q **Okay.**

4 A My recollection was I, that same day, got on
5 the phone to the state defender, Mr. Barrett, who I knew
6 and considered a friend who I had worked with in the past,
7 and asked him for help in handling it.

8 Q **Have you listened to the recording of yourself
9 that day?**

10 A No.

11 Q **Do you recall raising your voice?**

12 A I don't recall what was said that day, but I
13 don't think I did.

14 Q **How -- Why don't you think you did?**

15 A Well, my recollection is that I was shocked
16 that he didn't stand up, and I waited until we went on
17 break and called Mr. Barrett. I don't think I addressed it
18 when he didn't stand up. I sure don't remember it if I
19 did.

20 Q **So you called Mr. Barrett before even asking
21 the public defender why he didn't stand up?**

22 A I really -- I can't recall the order of events
23 that day. I may have talked to that public defender in
24 chambers and asked him what the problem was. That's
25 possible.

1 **Q** Can you tell me where the Texas County
2 Sheriff's Department is in relation to your courtroom?

3 **A** Essentially underneath the courtroom. The
4 office is on the first floor. The courtrooms are on the
5 second floor. The jail connects to the sheriff's office
6 and extends out to the west on ground level.

7 **Q** How often do you visit the sheriff's office?

8 **A** Not very often.

9 **Q** Are you at all familiar with the layout of the
10 sheriff's office?

11 **A** Yes.

12 **Q** Do you know where -- If someone's being
13 detained involuntarily, do you know where they are held?

14 MR. FLEMING: I will object to the form.

15 Subject to that, you can answer.

16 MS. KAYSER: Join the objection.

17 THE WITNESS: I'm sorry, Portia.

18 MS. KAYSER: That's okay. I'm just joining
19 the objection. Thank you, Judge.

20 **Q** (By Mr. Rothert) Okay. And I'll just clarify.
21 Just based on what you know from being down there.

22 **A** Well, there are a number of cells where people
23 are detained. I don't think that's what you're asking
24 about, though. You're talking about a drug test in this
25 type of a case?

1 Q **Yes.**

2 A Okay. No, I don't.

3 Q **You mentioned being interviewed by some**
4 **representatives from the Judicial Commission. Did they ask**
5 **you to take any actions or --**

6 A They were not -- They did not approve of the
7 way that I handled the Rogers situation, and the main
8 concern was drug testing of people in court. And I was
9 surprised by some of that conversation, and based on my
10 research, I'm still not sure I'm in complete agreement with
11 it, but I was directed -- well, I wasn't directed.

12 It was suggested to me that it's problematic
13 to even ask someone, such as the Starry Ballis example, to
14 ask someone if they would agree to be drug tested, which
15 I'm sure is what I did with Starry Ballis. It's similar to
16 the question you asked me before. I used to ask if -- and
17 oftentimes I would ask because, for example, when a
18 defendant is entering a plea of guilty, I'm trying to
19 determine if they even understand what they are doing
20 because sometimes people would be barely able to stand at
21 the podium.

22 So I would ask the question, are you under the
23 influence of any drugs today, on a misdemeanor plea. On a
24 felony plea, that's one of the standard questions you're
25 supposed to ask and you're not supposed to take the plea if

1 they say that they are, but what do you do if they are
2 exhibiting all the signs of being under the influence but
3 say they are not? I don't know.

4 Usually they would say no, I'm not, and I
5 would say, well, do you have a problem with being tested.
6 And I think that's what I did with Ms. Ballis. And when
7 they would consent, then that would be the next step would
8 be to have them tested. The commission, you know, Judge
9 Rahmeyer specifically said, well, you're the judge and
10 there is someone standing before you in court, do you
11 really think they feel like they are free to say no to that
12 request.

13 And I'm just being very candid with you,
14 Counselor. I really had not considered that perspective at
15 that point, and I felt like she was right about that.
16 Whether it was something that was allowed or not, I felt
17 like she was right about that because there is -- there are
18 a lot of potential consequences based on what that test
19 might be. And so, you know, she told me -- We had the
20 conversation that day is that allowed, and there really
21 wasn't a conclusive answer to that question, but they left
22 me with the suggestion that it's best not to do that and so
23 I have not. Since that time, I have not done that.

24 As I have told you, I have not done it in
25 criminal court at all. I even asked the question that day,

1 just so you understand, what do I do if I was pulling in to
2 court and saw that this defendant was the person driving
3 the vehicle and I know they are going to get in the vehicle
4 as soon as they leave and endanger people on the roadway.
5 Am I not supposed to be concerned about that? And I was
6 told no, you're not supposed to be.

7 And so even when someone appears in court to
8 me to be extremely intoxicated or under the influence, I
9 have not asked that question since. The only time that I
10 have requested or agreed to a drug test is when it's a
11 motion before me in a civil case since that time.

12 **Q Okay. Thank you. You had mentioned that drug**
13 **testing was the main concern raised with you regarding**
14 **June 20th, 2017, in your courtroom. What other concerns**
15 **were raised?**

16 A My demeanor. The same concern you expressed,
17 how I sounded on the recording.

18 **Q Have you made any changes in response to that**
19 **concern?**

20 A Yes.

21 **Q What changes have you made?**

22 A I try to be more mindful of that and not raise
23 my voice to the level that I did on those recordings.
24 Those were the first that I had ever sat and listened to
25 myself on a recording, which is odd probably to hear, but

1 that's several years into my judicial career and I had
2 never sat and done that until then, and I didn't like the
3 way I sounded either.

4 And it's interesting to do that because
5 when -- You know, as with anything in life, when you are
6 there observing the whole thing and you have the visual and
7 you can hear and see what the other people are doing and
8 know what's going on and the totality of the context, then
9 it's much different than just hearing yourself on a
10 microphone responding to something. It's very different.
11 So I have tried to be more careful about that.

12 I think it's -- I think it's important that
13 people know they are getting treated respectfully and with
14 justice when they are in court, and I certainly intend to
15 make sure that that's what I portray. And so I have tried
16 to be more aware of that.

17 **Q Were there any other concerns that were
18 raised?**

19 A Well, I was asked about the incident with the
20 public defender on that same occasion. Those complaints
21 were filed at the same time essentially, and so, yes,
22 because I was also surprised that they did not agree with
23 my handling of that one. I was expecting that they would
24 agree with that, and they did not. They told me that I
25 acted too harshly to that young attorney.

1 **Q** Now, you mentioned -- So there was a complaint
2 also about that filed?

3 **A** Yes.

4 **Q** Who filed that complaint, if you know?

5 **A** I don't think I'm allowed to know who files
6 the complaints.

7 **Q** Okay. Did they express -- Did the Judicial
8 Commission folks express any other concerns?

9 **A** That's my recollection, that those were the
10 main things. And they kind of let me know that the way
11 that judges handled court when I was a young attorney is
12 not the way they expect court to be handled these days,
13 that in a case like that with the public defender, that
14 essentially I should accommodate things and not address
15 things like that.

16 And just so you understand and anyone reading
17 this record would understand, there is a Canon of Judicial
18 Ethics that requires me to be concerned about those things,
19 and so I have tried to be concerned about those things and
20 tried for the sake of the attorney before me who has,
21 hopefully, a long and fruitful and rewarding career in the
22 practice of law, including as a public defender, which I
23 believe is an incredibly noble calling, that they learn to
24 conduct themselves appropriately at a young age, and I feel
25 like judges have a responsibility there. And so I was told

1 I took that further than they want me to. But that's --
2 That's the reason I believe not only on a personal belief
3 level but on the level of I believe that's what is required
4 of judges under the Canons of Ethics that I address those
5 things.

6 Q **And the Canons of Ethics, of course, also**
7 **require judges to be respectful and treat with dignity all**
8 **people who appear before the court; isn't that true?**

9 A Yes, they do. Yes.

10 Q **Did anything else come out of that Judicial**
11 **Commission meeting, any other changes or anything you did**
12 **as a result of that?**

13 A I don't recall anything in particular in the
14 way that you're asking that probably. I think that it was
15 just a good moment for me to re-evaluate myself a bit and
16 approach each day with a little more joy in my heart about
17 the job perhaps, as corny as that might sound, because
18 there are days when this job gets pretty hard, and when
19 you're in court and you're dealing with some of these
20 decisions and the safety of people and all the things that
21 happen in court, sometimes it can be pretty taxing and --
22 but I love what I do and I love the chance to help people
23 and that's the only reason that I do it, and so I have
24 tried to bear that in mind a little bit more since then. I
25 think if you can't learn from any situation, then you're

1 not very wise, and so I have tried to learn what I can from
2 that.

3 **Q Have you had any other complaints that you're**
4 **aware of that have been filed with the Judicial Commission,**
5 **in your career as a judge?**

6 **A Yes.**

7 **Q Do you know how many?**

8 **A I think two others.**

9 **Q And were those before or after this, if you**
10 **know?**

11 **A I think one was before and one was about the**
12 **same time.**

13 **Q Has the Judicial Commission ever taken any**
14 **official action against you?**

15 **A No.**

16 **Q Shortly after your meeting with the Judicial**
17 **Commission folks, you recused yourself from the case**
18 **involving the child, KC, initials we're using here?**

19 **A Yes.**

20 **Q Is that correct?**

21 **A Yes.**

22 **Q Do you know what -- Did someone ask you to**
23 **recuse or did you do it yourself?**

24 **A No, I did it myself.**

25 **Q Do you know -- Do you know why or do you**

1 **remember why?**

2 A Sure. I believed it was appropriate for me to
3 do that because I wanted all of those people to believe
4 that they were being treated fairly, and I felt at that
5 point, it was more likely than not that they would not feel
6 that way if I remained as the judge.

7 **Q I believe you answered this, but you had --**
8 **Going back to 2017, in this time in June of 2017, you had**
9 **two bailiffs that worked your courtroom; is that correct?**

10 A We had three bailiffs. On days like the ones
11 in question with the Rogers matter, my recollection is
12 there was a circuit judge in Courtroom A and I was in
13 Courtroom B, which is an adjoining courtroom that's
14 connected by the doors we have talked about and holding
15 cells in between, and usually there would be the head
16 bailiff in with the circuit judge, Bobby Duncan would be in
17 with me, and Eric Brown, the other bailiff, would kind of
18 roam back and forth between the two courtrooms.

19 **Q Okay. And you mentioned, I think, the head**
20 **bailiff's name, but could you just say it again right here?**

21 A Jamie Fox.

22 **Q Okay. When you were ordering drug testing**
23 **similar to the situation on June 20th, 2017, did you do**
24 **that in a written order or orally or did it depend?**

25 MR. FLEMING: I'll object to the form. Vague.

1 Subject to my objection, you can answer.

2 **Q (By Mr. Rothert) Okay. I'll just clarify.**

3 **When you would order drug testing, did you do it in a**
4 **written order?**

5 A You know, that depends on any particular case.

6 I couldn't say that there is a hundred percent with
7 anything, but usually what would happen would be there
8 would be a motion and the attorneys would present a
9 proposed order that I would sign off on. Not always. And
10 probably in drug court context, I don't think that I signed
11 written orders on some, at least, of those. That's a
12 stipulation by someone entering drug court as they
13 understand they are going to be tested. So it's possible
14 on some of those that they are oral, at least initially. I
15 might follow up with written orders.

16 **Q Is -- Do you still preside over probate cases,**
17 **child custody cases like the one involving the Rogers'**
18 **granddaughter?**

19 A Yes.

20 **Q And how is court done any differently now in**
21 **2021 than it was in 2017?**

22 MR. FLEMING: I'll object to the form. Vague.

23 Subject to my objection, you can answer.

24 **Q (By Mr. Rothert) All right. I'll clarify.**

25 **Speaking physically, is court done differently because of**

1 **the COVID-19 pandemic or any technological updates that**
2 **have come to Texas County since 2017?**

3 A We have many things that are different because
4 of COVID. Some things are done by WebEx. I don't do any
5 contested hearings by WebEx, however. I want those done in
6 person. I want to be able to evaluate a witness in person.
7 Lots of the preliminary hearings are done that way, though.
8 If it's a motion hearing between attorneys and things like
9 that, I will do those by WebEx.

10 Also, the legislature changed the statutes
11 regarding emergency guardianships. At the time that this
12 one was entered, that could be done without a hearing. Now
13 there's a hearing that is required before an emergency
14 guardianship can be entered.

15 MR. ROTHERT: Okay. I have a couple tying-up
16 things, but I think I'm about ready to wrap up. If I could
17 have -- I would like a three-minute break to go off the
18 record, and then we can wrap this up.

19 (Whereupon, a short break was taken.)

20 MR. ROTHERT: We can go back on the record.

21 Q **(By Mr. Rothert) Okay. Back on the record.**
22 **Do you have any information about the demeanor or behavior**
23 **of Norma Rogers, Arthur Rogers or William Hale after they**
24 **left your courtroom to be drug tested?**

25 A No.

1 MR. ROTHERT: I appreciate your time and your
2 responsive -- responses and your reflectiveness and your
3 promise of a copy of Am I a Turtle or Tortoise --

4 THE WITNESS: I don't think I promised that.

5 MR. ROTHERT: Well, offered. So not thrilling
6 to be deposed, especially questions that aren't our
7 proudest moments, which seems to be the only thing people
8 ask questions about during a deposition. So I really
9 appreciate you helping make this go pretty smoothly, and I,
10 again, thank you and all counsel and Jamie for indulging my
11 needed recess.

12 As you probably know, in a deposition you
13 can -- you have the right to review the deposition, make
14 any corrections, and sign it before a notary. You also
15 have the opportunity to waive signature. Do you know what
16 you would like to do?

17 THE WITNESS: I would like to review it.

18 MR. ROTHERT: So I have nothing else. Thank
19 you, everyone.

20 MS. KAYSER: I have no questions. Thank you.

21 THE REPORTER: Copies of the transcript?

22 MR. FLEMING: Yes, etrans.

23 MR. ROTHERT: Could I have an etrans and a
24 full page.

25 (Mr. Fleming's order was given before we went

1 on record, etrans.)

2

3 (Deposition was adjourned at 4:24 p.m.)

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1

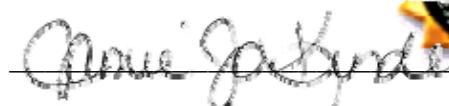
CERTIFICATE OF REPORTER

2

3 I, Jamie Jo Kinder, CCR No. 842, CSR No.
4 084.003306, do hereby certify that the witness whose
5 testimony appears in the foregoing deposition was duly
6 sworn by me; that the testimony of said witness was taken
7 by me to the best of my ability and thereafter reduced to
8 typewriting under my direction; that I am neither counsel
9 for, related to, nor employed by any of the parties to the
10 action in which this deposition was taken, and further that
11 I am not a relative or employee of any attorney or counsel
12 employed by the parties thereto, nor financially or
13 otherwise interested in the outcome of the action.

14

15

A circular seal for the National Court Reporters Association (NCR). The outer ring contains the text "NDTCA" at the top and "SIGNED ELECTRONICALLY" at the bottom. The center features a stylized sunburst design.

Certified Court Reporter

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1 Alaris Litigation Services
2 711 North Eleventh Street
3 St. Louis, Missouri 63101
Phone (800) 280-3376

4 March 3rd, 2021

5 Mr. John Patrick Fleming
MISSOURI ATTORNEY GENERAL'S OFFICE
6 P.O. Box 899
Jefferson City, MO 65102

7

8 In Re: NORMA ROGERS, et al. v. DOUGLAS GASTON, et al.

9

10 Dear Mr. Fleming:

11 Please find enclosed your copy of the deposition of DOUGLAS
12 GASTON, taken on February 26th, 2021, in the
above-referenced case. Also enclosed is the original
signature page and errata sheets.

13 Please have the witness read your copy of the transcript,
14 indicate any changes and/or corrections desired on the
errata sheets, and sign the signature page before a notary
public.

16 Please return the errata sheets and notarized signature
17 page to Alaris Litigation Services for filing prior to
trial date.

18 Thank you for your attention to this matter.

19 Sincerely,

20

21 Jamie Jo Kinder, CCR, CSR
Enclosures
22 Cc: Mr. Anthony Rothert
Ms. Portia Kayser

23

24

25

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1 STATE OF)
2 COUNTY OF) ss.
3)

4 I, DOUGLAS GASTON, do hereby certify:

5 That I have read the foregoing deposition; That I have made
6 such changes in form and/or substance to the within
7 deposition as might be necessary to render the same true
8 and correct; That having made such changes thereon, I
hereby subscribe my name to the deposition.
I declare under penalty of perjury that the foregoing is
true and correct.

9

10 _____
11 DOUGLAS GASTON

12 Executed this _____ day of _____, 20____,
13 At _____ County, _____.

14 _____
15 Notary Public

16 My Commission Expires: _____

17 Signature page to: Mr. Jack Fleming

18 CM/DOUGLAS GASTON, February 26th, 2021

19 Re: NORMA ROGERS, et al. v. DOUGLAS GASTON, et al.

20

21

22

23

24

25

1 Witness Errata Sheet

2 Witness: DOUGLAS GASTON

3 Re: NORMA ROGERS, et al. v. DOUGLAS GASTON, et al.

Date Taken: February 26th, 2021

Upon reading the deposition and before subscribing thereto,
the deponent indicated the following changes should be
made:

8 Page ____ Line ____ Should read: _____

9 Reason assigned for change : _____

10 Page ____ Line ____ Should read: _____

11 Reason assigned for change : _____

12 Page ____ Line ____ Should read: _____

13 Reason assigned for change : _____

14 Page _____ Line _____ Should read: _____

15 Reason assigned for change : _____

16 Page _____ Line _____ Should read: _____

17 Reason assigned for change :

18 Page Line Should read:

19 Reason assigned for change :

20 Page Line Should read:

21 Reason assigned for change :

22 Page Line Should read:

23 Reason assigned for change :

25 Witness Signature:

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